

**SOUTH ZONE REGIONAL JUDICIAL CONFERENCE ON
"ROLE OF COURTS IN UPHOLDING RULE OF LAW"
INAUGURAL SPEECH BY
HON'BLE MR.JUSTICE R.K. AGRAWAL, CHIEF JUSTICE
31.1.2014 – 10.05 AM**

Vanakkam,

My brother Mr.Justice Satish K. Agnihotri, sister Mrs.Justice Chitra Venkataraman, President, Tamil Nadu State Judicial Academy, Members of Board of Governors of the Academy, my esteemed sister and brother Judges, Mr.Justice S.Mohan, former Judge, Supreme Court of India, Mr.Justice P.Shanmugam, former Judge, High Court of Madras, Director and other Officers of National Judicial Academy, Director and Officers and staff of Tamil Nadu State Judicial Academy, ladies and gentlemen,

Very Good Morning to all of you,

At the outset, I am thankful to the organisers of this Judicial Conference for having given me an opportunity to inaugurate this Conference and share my thoughts with you all.

The Conference is indeed a timely one as the Role of Courts in upholding Rule of Law is getting more prominence than ever before.

I am reminded what Aristotle said about two thousands years before regarding Rule of Law, '*it is more proper that law should govern than any one of the citizens*'. Rule of law enjoins every citizen to be treated subject to law. Though there is no express mention about Rule of Law in our Constitution, Articles 13, 14, 15, 16, 19, 20, 21, 22 and 368 provide for the inviolability of fundamental rights of the citizens inasmuch as that they are protected from all State actions, which are inconsistent and in derogation of constitutional guarantees to protecting fundamental rights.

In the earlier days, the role of courts has confined only to solving disputes between two individuals. But gradually, courts have emerged as key participants in the public policymaking process exercising discretion to make decisions which have far reaching consequences in terms of the distribution of benefits and burdens within society.

The powers of courts have grown in step with the spread of 'rights'. If the other branches of the Government do not respond to the demands of the society, courts have to step in so that the interest of the public is safeguarded. Courts are very often left with no alternative but to step into the vacuum of policy left by the executive. Legislative as well as executive acts of omission and commission may attract the wrath of judicial scrutiny when laws or other legislations or rules are inconsistent or in derogation of the fundamental rights offending the Rule of Law.

There is a great expectation among lawyers and activists in favour of judicial review of executive decisions but at the same time, the courts have to be careful in not crossing the laxman rekha. Our Constitution has checks and balances for the harmonious functioning of all the three organs viz., executive, legislature and judiciary. Separation of power works within the parameters of checks and balances with the sole aim to ensuring protection of rights as well as interests of the individuals and efficient administration to accomplish the task of social welfare State. The functions of the different branches

of the Government have been sufficiently differentiated by the Indian Constitution and it does not contemplate assumption by one organ or part of the State, of functions that essentially belong to another. Thus, while embarking on the judicial review, the courts have to keep in mind the rights and responsibilities of the other two organs and ensure that they are not stepping into the jurisdiction of the other organs.

I will be failing in my duty if I do not point out here about the role the lower courts have to play in upholding the rule of law.

As you may be aware, pursuing claims in the lower courts is a difficult process. Yet the litigants prefer to pursue the claims mainly because of the faith they repose on the system that the judicial process has legitimacy and that the judges are comparatively more trustworthy and rights-oriented than their legislative and bureaucratic counterparts. Therefore, the lower courts have a duty to best preserve and protect the economic and social rights of individuals at the grassroots. This we can ensure by providing more resources and greater financial commitment to the lower courts. The judges of the lower

courts are overburdened and the immediate need of the lower courts are additional Judges. Already the Hon'ble Supreme Court of India and the Government of India are taking steps to double the strength of Judges and proposals have been sent to the State Government also.

Next, if real changes are to be made, there needs to be a culture shift within the lower tier i.e. lower courts. It must begin with the lawyers, whom the litigants approach first. The lawyers have to advise their clients properly and guide them through the complicated maze of procedures in the lower courts. However, many of the lawyers at the grassroots level suffer from lack of critical skill-sets. It is primarily because the legal education they receive within their law colleges often is inadequate. Books are outdated. English – the formal language of legal precedents from the upper courts – is not emphasized, infrastructure of the law college buildings is abysmal etc. In most of the law colleges, there is no opportunity to educate students through clinics or to engage them in critical analysis of the daily problems that they are likely to encounter in practice.

If they are trained, it will go a long way in not only uplifting them but also will help in improving the plight of the litigants. At this juncture, we are proud to say that the Tamil Nadu State Judicial Academy is in forefront in organising training programmes for lawyers so that their contribution for the healthy judiciary would be more.

Though it is unavoidable that conflicts do arise between the judiciary and executive, we have to bear in mind that the courts are complementary to the democratic process.

The National Judicial Academy and the Tamil Nadu State Judicial Academy are doing yeoman service in having this subject as the theme of the Conference since convergent of different minds will bring more clarity to the more important subject and it will be an educating tool to the practitioners of law as also Judges.

I hope the participants of this Conference will make best use of the deliberations here. I formally inaugurate this Conference. Thank you